



RESIDENTIAL PROPERTY MANAGEMENT INDUSTRY REGULATION

AN INFORMATION PAPER

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Executive Summary

Property Managers are the gatekeepers of housing for many of New Zealand's most vulnerable residents.

With home ownership at its lowest level in 60 years and house prices continuing to rise across the country, demand for rentals is increasing.

Therefore, REINZ is calling on the Government to formally review the need to regulate the property management industry, including public consultation, and to announce its recommendations for reform before the 2020 election.

Why should property management be regulated?

We believe an absence of regulation is having a negative impact on tenants and landlords, and those property managers who carry out their work ethically.

No regulation means:

- ✗ Anyone can set up a business as a property manager, without any experience or qualifications
- ✗ Property managers do not need to hold funds in a trust account
- ✗ Property managers don't have to hold insurance
- ✗ Money collected by property managers can be paid into the property managers personal account
- ✗ There is no compulsory code of conduct for property managers to keep them accountable
- ✗ There is no clear mechanism to remove poor performers from the industry.

What could regulation look like?

It is important that regulation doesn't become overly expensive such that costs then get passed on to landlords and tenants. We want regulation to be simple and cost-effective but robust enough to deter bad behaviour and improve professionalism across the industry.

Regulation should require property managers to:

- ✓ Have a minimum level of education to operate, such as the NZ Certificate in Residential Property Management
- ✓ Have ongoing education obligations, to ensure that they stay up-to-date with law changes
- ✓ Hold tenant and landlord funds in a trust account
- ✓ Hold appropriate insurance
- ✓ Adhere to a mandatory code of conduct or set of standards to keep them accountable
- ✓ Be subject to fines or sanctions if they don't follow the code of conduct or standards.



Introduction

The Real Estate Institute of New Zealand (REINZ) is a membership organisation representing over 14,000 real estate professionals nationwide. REINZ members specialise in all aspects of real estate work including residential, rural and commercial and industrial sales, auctioneering, business broking, commercial leasing and residential property management. Members of REINZ aspire to best practice standards and are bound by the REINZ Codes of Practice.

As at August 2019, REINZ represents 988 members who carry out residential property management activities.

Established over 100 years ago, REINZ has been a key part of the changing face of real estate. REINZ is a trusted source of support and information for our members, providing current statistics, real estate forms, advice and guidance, advocacy, continuing education, national events and much more.

REINZ is constantly working on improvements in technology, presentation of data, communications and education to benefit both our members and consumers of real estate and property management services.

REINZ is pleased to release this Information Paper as part of its advocacy work as a membership organisation, with the aim of assisting with a review of the need to regulate the residential property management industry. It appears that the last significant review was undertaken by the previous Government in 2009 when it was considering whether to include property management in the Real Estate Agents Act 2008. **Given the changes to New Zealand's rental demographics, home ownership rates and tenancy and rental property laws since 2009, REINZ urges the Government to consider an urgent review of the need to regulate the property management industry.**

Out of 698 submissions to the Select Committee that considered the Real Estate Agents Bill ("REA Bill") in 2008, 98% were in favour of regulating residential property managers ("property managers"). As a response to the overwhelming support of the inclusion of property managers in the REA Bill at the Select Committee stage, a review was ordered to determine whether or not residential property management activities should be included within the Real Estate Agents 2008 (the REA Act). 138 submissions were made during that review but it was concluded that regulation was not required at that stage despite the support of a majority of submitters in favour of regulation.

In New Zealand, the residential rental market has experienced a steady increase in its average rental amount since 2009.

The national mean weekly rent as at July 2019 was \$469 compared to \$312 in July 2009.¹ Auckland has experienced approximately a 33% increase in the average rent over the past 8 years alone. In addition, legislation relevant to residential tenancies and rental properties has undergone several major changes, which has increased the duties of landlords. These duties are, in practice, often assumed by property managers. The recent abolition of letting fees and the release of privacy guidelines for landlords regarding the information they can gather from tenancy applicants², reinforces the need for the industry to maintain a professional focus.

In October 2018 a number of organisations, including REINZ, signed an Open Letter to the Government calling for the regulation of the property management industry.³ The letter followed research undertaken by the Auckland City Council, Consumer NZ and Anglican Advocacy concluding that the lack of regulation is causing harm to consumers. Examples of consumer harm caused by a lack of regulation in New Zealand also appear at pages 9–12 of this information paper.

New Zealand remains one of the very few countries in the OECD that does not regulate its residential property managers. Information about the regimes implemented in England, Scotland, Wales, Canada and all states of Australia is set out at pages 13–17 of this paper and possible options for reform in New Zealand are set out at page 17.

¹According to Ministry of Business, Innovation and Employment data accessed on 20/08/2019, the mean weekly rent as at July 2019 was \$469 nationally. These statistics use rental bond data to assess the mean weekly rent, and tables breakdown this data by region and territorial authority

²<https://www.privacy.org.nz/assets/Uploads/2019-08-07-Landlord-guidance-information-v2.0-A649460.pdf>

³<http://www.anglicanadvocacy.org.nz/projects/property-management/>



In September 2019, REINZ will launch a public facing campaign entitled '**A Call for Change: Better Property Management**'.⁴ The campaign is designed to generate further discussion around the need for property management regulation and the form regulation might take.

For completeness, the range of activities that property managers undertake varies significantly within the industry and includes (but is not limited to):

- The initial inspection of a property;
- Letting a property, including tenant or lessee vetting;
- Lodging the bond for a residential tenancy;
- Collecting rent and retaining it on behalf of the landlord;
- Regularly inspecting the property;
- Organising maintenance and repairs;
- Providing or contracting for building management activities;
- Regularly reporting to the landlord;
- Performing rent reviews; and
- Arranging for the payment of local authority rates and insurance, and in some instances organising the insurance in the first place.

Legislative Background to the REA Act

Situation Pre-REA Act

Prior to the 17 November 2009 commencement of the REA Act, there was no specific regulation for property managers. Under the Real Estate Agents Act 1976 ("REA Act 1976"), if a person acted as an agent for reward in respect of letting and leasing of land, they had to be licensed.⁵ This meant that if a person was collecting rent monies on behalf of the landlord without letting or leasing the property then the REA Act 1976 did not apply and hence was subject to the general law. The property owner could however pursue a civil claim through

the courts if the property manager breached the duty under agency law.

Effectively, this meant that there were a number of unlicensed property managers offering similar services to licensed real estate agents managing properties but were not subject to REINZ rules or disciplinary procedures and did not need to fulfil any good character or education requirements, either at entry into the industry or in order to continue practising. During the 2008 reform surrounding the REA Bill, REINZ submitted that this was an 'undesirable position'.⁶

Discussions during the reform of the REA Act

The Parliamentary Debates during the passing of the REA Bill between 2007 and 2008 were generally in favour of the inclusion of the property managers within the REA Act.⁷

While the Green Party, New Zealand First, and the Maori Party all supported the Bill, they expressed significant reservations about the exclusion of property managers. The National Party and United Future argued in particular that it wasn't outside the scope of the Bill because property management is an integral part of real estate work.

Particular mention was made of the fact that the purpose of the REA Bill was to provide consumer protection, but if anything went wrong, "the only recourse to consumers may be via the Courts."⁸ This was especially the case for an industry whose workers dealt with "hundreds of millions of dollars" without any requirement to be audited and have "more opportunity to misappropriate funds than" real estate agents."⁹

The Select Committee at the time received 698 submissions on the Bill, with 98% opposing the exclusion of the property managers from the Bill. However, the Cabinet considered that this was not necessarily representative of all stakeholders' views because the submitters were mostly members of the real estate industry.¹⁰ Instead, the Government ordered a review to be completed following the passage of the REA Bill to consider the issue of regulation of property managers separately.

⁴www.acallforchange.co.nz

⁵See s3 of the Real Estate Agents Act 1976

⁶See REINZ submission on the Real Estate Agents Bill 2007, p58-59

⁷See Appendix 1

⁸Ibid

⁹Ibid

¹⁰Review of regulation of property managers, Cabinet Domestic Policy Committee 2009



2009 Review of Residential Property Managers and the Outcome

In the subsequent review of the regulation of residential property managers in 2009 (“Review”) it was decided that imposing occupational regulation on property managers was not justified at that time as the “significant harm” test had not been met and that property owners and the industry were taking steps to improve the quality of property management services through self-regulation. The underpinning principle of this outcome was that the Government should only intervene and regulate an occupation where it is necessary.¹¹

It was also concluded at the time of the Review that many property managers belong to organisations that encourage best practice to ensure a good standard of service is provided. However, as at August 2019, REINZ has 988 members who held themselves out as providers of property management services, either in addition to being salespersons or not. This is only a small percentage of the 5,622 persons who put their occupation in the 2013 Census as being a Property Manager.¹² Other organisations such as PROMINZ have 70 members from various organisations who have wished to show their membership on its website.¹³ Accordingly, there appears to be a significant number of property managers who are not affiliated with a professional body.

Current Status of Regulation of Property Managers

Currently, residential tenancy matters are expressly excluded from the REA Act.¹⁴ A letting agent is a person who acts or holds himself or herself out as an agent in respect of the tenancy and is not required to be licensed under the REA Act.¹⁵

Under the REA Act, as property management is not considered to be ‘real estate agency work’, only property managers who are licensed under the Act (despite there

being no requirement to do so) can be disciplined, and in such case only for misconduct. If the behaviour complained of is not significant enough to meet the definition of misconduct,¹⁶ then the disciplinary regime under the REA Act does not apply to those persons – even if they are licensed.

Some property managers choose to be members of industry organisations such as REINZ. Despite their best efforts, however, industry bodies are unable to enforce their best practices onto their members as they have limited disciplinary powers and compliance with best practices is offered, in conjunction with membership, on a voluntary basis only.

Civil remedies continue to become available for property owners to pursue claims against property managers under the general law, the Fair Trading Act 1986 and/or the Consumer Guarantees Act 1993.

Statistical Data

Rental bond data collected by the Ministry of Business, Innovation and Employment (“MBIE”) has tracked the substantial increase in the average amounts of rent paid each month.¹⁷ As of July 2019 the mean weekly rent nationally was \$469.00, and \$564.00 in Auckland.¹⁸ This is approximately a 40% increase nationally and 40% increase in Auckland from the mean weekly rents in July 2009, the year of the review of property managers.¹⁹ Figure 1 highlights the continuous rise in rental amounts that occurred in the Auckland, Canterbury and Wellington regions in addition to the amount rental amounts have risen nationwide.²⁰

¹¹See Cabinet Paper on Review of regulation of property managers, Cabinet Domestic Policy Committee, 27 May 2009

¹²See Appendix 4, sourced from http://archive.stats.govt.nz/browse_for_stats/economic_indicators/CPI_inflation/2013-cpi-review-advisory-committee.aspx#committee. The amount of property managers listed will include some commercial property managers within its number

¹³See <https://prominz.org.nz/members-directory/>

¹⁴See s4(1) of the REA Act

¹⁵See s2 of the Residential Tenancies Act 1986 for definition

¹⁶s73 of the REA Act

¹⁷See Appendix 4, Figure 1, Mean Rents by Region, Rental bond data, Ministry of Business, Innovation and Enterprise, sourced from <https://www.mbie.govt.nz/building-and-energy/tenancy-and-housing/rental-bond-data/>

¹⁸See Mean Rents by Region, Rental Bond Data, Ministry of Business, Innovation and Enterprise, <https://www.mbie.govt.nz/building-and-energy/tenancy-and-housing/rental-bond-data/>

¹⁹Ibid

²⁰See Appendix 4, Figure 1, Mean Rents by Region, Rental bond data, Ministry of Business, Innovation and Enterprise, sourced from <https://www.mbie.govt.nz/building-and-energy/tenancy-and-housing/rental-bond-data/>



In addition, available census data from the last three published censuses has shown a continuous rise in the median weekly rent including a 40% rise in the median rent from the 2013 Census compared with that in 2006.²¹ In 2013, the median weekly rent was \$280, compared with \$200 in 2006 and \$160 in 2001.²² From this, one could draw a conclusion that the property managers handle larger sums of money now compared to when the last review of regulation of property managers was undertaken.

As home ownership has declined across New Zealand since 2009, the corresponding percentage of those living in rental accommodation has increased. In 2013, 64.8% of households owned their home or held it in a trust. This was a reduction from the 66.9% in 2006.²³ Figure 2 shows the continual increase in the number of rental dwellings from the 1991 Census to the 2013 Census. The 2013 Census showed that there are now 453,153 households that rent, up from 388,275 in the 2006 Census.²⁴ From the 2006 Census onwards, the graph shows that the more householders make rental payments than owners who make payments towards their mortgage.²⁵

In addition, the 2013 Census showed that the rate of home ownership for individuals (aged 15 or over) also declined as only 49.8% of individuals owned or partly owned the home they lived in, down from 53.2% in 2006.²⁶ Only those in the Gisborne region had a higher percentage of those who did not own their own home than those in Auckland where only 38.5% of people did not own their own home.

The data from the 2013 census showed that more people were renting from the private sector than previously, with 83.7% or 355,554 households doing so. This was an increase from 81.8% in 2006 and 78.4% in 2001.²⁷ It follows from this statistic that more tenants than before will come into contact with property managers.

In the 2013 Census, 39.3% of the 14,319 people who listed their occupation as one that falls within in the category of 'Real Estate Sales Agents' were property managers.²⁸ Figure 3 illustrates that in the 2013 Census, 5,622 people registered their profession as a property manager, up from 4,545 people in 2006.²⁹ It is clear from these statistical data that property management is a key part of the real estate industry.

As can be seen from Figure 4,³⁰ property managers were the occupation within the Real Estate industry to increase in number according to the census figures in 2013 compared with the 2006 Census. While the amount of real estate agencies, agents, representatives and business brokers fell in the seven years between the two censuses, more people were operating as property managers in 2013.

It is clear that property managers are an integral part of the real estate industry and following current trends their numbers will only increase.

Responsibilities of Residential Property Managers

Under Residential Tenancies Act 1986 ("RTA")

Property owners engage the services of property managers for a number of varied reasons. Examples of common reasons include:

- To free up the owner's time;
- To ensure effective management of tenancy; and/or
- To ensure compliance with the landlord's obligations.

Ensuring compliance with the RTA may have more significant meaning to landlords now than previously due to the inclusion of s16A under the Residential Tenancies Amendment Act 2010.

²¹See Table 28, Statistics New Zealand (2014). 2013 Census QuickStats about housing - tables. Available from www.stats.govt.nz

²²Ibid. Note that the average median rent was rounded to the nearest \$10. The fallout from the Canterbury Earthquakes account for the seven year gap between censuses, rather than five

²³See Statistics New Zealand (2014). 2013 Census QuickStats about housing. Available from www.stats.govt.nz, p.12

²⁴See Table 13, Statistics New Zealand (2014). 2013 Census QuickStats about housing - tables. Available from www.stats.govt.nz

²⁵Ibid

²⁶See Statistics New Zealand (2014). 2013 Census QuickStats about housing. Available from www.stats.govt.nz, p.14

²⁷Ibid, p.15

²⁸See Appendix 4, Figure 3, sourced from http://archive.stats.govt.nz/browse_for_stats/economic_indicators/CPI_inflation/2013-cpi-review-advisory-committee.aspx#committee. The amount of property managers listed will include some commercial property managers within its number

²⁹Ibid

³⁰See Appendix 4, Figure 4, sourced from http://archive.stats.govt.nz/browse_for_stats/economic_indicators/CPI_inflation/2013-cpi-review-advisory-committee.aspx#committee. The amount of property managers listed will include some commercial property managers within its number



Under this provision, a landlord who is out of New Zealand for longer than 21 consecutive days must ensure that the landlord has an agent in New Zealand. This was to address logistical difficulties which tenants can experience when landlords attempt to manage properties from overseas.³¹ With the 'bright-line' test for the sale of residential property introduced in 2016 (under which sale within two years of the purchase will be taxed on its gains) existing property investors' preferred option when departing New Zealand may be to retain the property, with an agent appointed, rather than sell.

An agent appointed by the landlord under s16A of the RTA has all the rights and obligations of the landlord.³² Arguably, this may seem as an attempt to regulate property managers although the background reports to this amendment do not indicate any such intention.³³

Under the law of general agency, the common principle is that where an agent (property manager) states at the time of entering into a contract that he or she is acting on behalf of the principal (property owner), and the principal is capable of being ascertained then the contract is between the third party (tenant) and the principal.³⁴ Section 16A of the RTA specifically alters the common law position by stating that an agent of the landlord is also a landlord for the purpose of the RTA, inferring that action can be taken against the agent directly. It could therefore be said that the agent's activities in relation to the tenancy would be regulated under the RTA where the situations fall under s16A.

Expectations of Property Managers

During the 2009 review of regulation of property managers, questions were asked as to what qualities property owners look for in a property manager. The response received by the Ministry of Justice at the time pointed out the key qualities as being honesty, integrity, reliability good and regular communication. To the question whether the submitters have experienced the problems associated with property managers

mentioned in the consultation paper for the review, 79% of the response indicated that they had.³⁵ The types of problems identified during the review were varied:

- Poor communication;
- Property manager failing to act in accordance with instructions or acting outside the agreed authority;
- Property manager failing to communicate a conflict of interest;
- Property manager failing to inspect a property thoroughly or at all;
- Property manager returning bond money to a tenant even though there is property damage;
- Property manager failing to issue a timely eviction notice;
- Property manager failing to ensure good standard of repairs or failing to organise repairs;
- Property manager failing to chase up non-payment of rent and allowing rent arrears to grow;
- Property manager failing to lodge a bond for a residential property; and
- Property manager failing to pass rent on to the property owner or pay third parties.

The submitters who wanted regulation were particularly concerned about not having rules for money handling and letting activities. Money handling problems may include, for example, fraud, failing to lodge bond money, losing money through negligence, not paying an owner rent money or not paying a third party on behalf of an owner. The Cabinet Paper noted that of the 55 submitters who have responded to the questions regarding money handling problems only eight responded that they had experienced problems.³⁶ When looking at the statistics supplied as part of the review, however, only 41 of the 55 were property owners and the rest were non-owners.³⁷ It could, therefore be said that approximately 20% of the owners experience money handling problems associated with property management.

³¹Background Report to the Social Services Select Committee on the Residential Tenancies Amendment Bill, Department of Building and Housing 2009

³²And the Ministry of Justice concluded at the time that property managers could not be regulated. See media release <http://www.beehive.govt.nz/release/no-additional-regulation-property-managers>

³³Although, this would mean that if the name of the landlord is not recorded in the tenancy agreement and is not readily identifiable, the property manager can be held directly responsible for the performance of the landlord's obligations under the Residential Tenancies Act. (See Department of Building and Housing Departmental Report to the Social Services Committee on the Residential Tenancies Amendment Bill, 2009)

³⁴Review of Regulation of Property Managers – Summary of Submissions, Ministry of Justice 2009

³⁵Review of Regulation of Property Managers – Summary of Submissions, Ministry of Justice 2009

³⁶Review of Regulation of Property Managers – Cabinet Domestic Policy Committee 2009

³⁷Review of Regulation of Property Managers – Summary of Submissions, Ministry of Justice 2009



Also, out of 93 submitters who commented on matters relating to trust accounts and annual audits, 63 of them commented on possible improvements to money handling practices.³⁸

Overall, it is evident that there are certain expectations of minimum standards for property managers' conduct and the way they handle money.

Harm Caused by Poor Property Management

The media regularly reports examples of poor property management. Some notable examples are set out below:

A property manager allegedly owed \$358,000 to 67 landlords, according to liquidators

In February 2018, NZ Herald reported that the company of an Auckland property manager owed 67 landlords more than \$350,000.³⁹ The liquidators of the firm reported that most of the rental payments owed dated back to January to February 2018 however, there were other sums that dated back to an unspecified period. One landlord, claimed that he was owed \$20,000, while another landlord claimed that he was owed between \$1,200 and \$3,500. It was also alleged that the property manager had failed to lodge at least 12 bond payments with Tenancy Services. In April 2019, a Stuff.co.nz article alleged that more than 72 landlords were owed money. The article also reported that the scam allegedly took place over nine years and involved two companies. The first company allegedly owed \$173,581 to unsecured creditors as well as \$10,177 to ANZ and \$103,595 to Inland Revenue. The second company allegedly owed unsecured creditors \$733,247 which took the total owed to over \$1 million.⁴⁰

Property Manager allegedly rented out garage to tenants

In July 2016, Newshub reported that a property manager was

in the business of allegedly illegally converting garages into rooms to be tenanted (without building or resource consents) and charging up to \$560/week.⁴¹ In one case, the garage was split in two, with one half occupied by a mother with a seven month old baby and a toddler. Those living in the garage were forced to share kitchen and bathroom facilities with tenants in the main house. A later Newshub article alleged that the tenant had been asked by the property manager to lie to Council inspectors and say that he had been living in the main house.⁴²

Agency allegedly rented office space in commercial building to family

In June 2017, the NZ Herald reported on a decision of the Tenancy Tribunal about a property management agency that had illegally rented out (at \$300/week) office space in a commercial building to a family in Wellington.⁴³ The building, which was later demolished following the November 2016 earthquake, was described as a health and safety risk by the adjudicator. The provider of the building's fire protection systems had shut them off as they had thought that the building was empty, and there was no air conditioning. The adjudicator described the risk as "chilling" and rejected the agency's argument that the tenancy was compassionate or temporary. The family were only discovered after the earthquake, and had been living there since June 2016. The family was awarded \$600 in exemplary damages.

Anna Mooney from the tenant's advocacy group Renters United outlined that the punishment followed a trend where property managers are given a fee, but no other repercussions. *'It allows them to reoffend, and there isn't any long-term deterrents to stop them doing these sorts of things.'*

Following the earthquake, the building was deemed too dangerous to enter and the family lost all their possessions.

³⁸Ibid

³⁹"Property manager David Sharma owes \$358,000 to 67 landlords, liquidators say", 27 February 2018 https://www.nzherald.co.nz/business/news/article.cfm?c_id=3&objectid=12002297

⁴⁰"Disgraced real estate agent David Sharma leaves victims with little hope", 21 April 2019 <https://www.stuff.co.nz/business/111719346/disgraced-real-estate-agent-david-sharma-leaves-victims-with-little-hope>

⁴¹"'Predatory' property managers renting out Auckland properties", 19 July 2016 <https://www.newshub.co.nz/home/new-zealand/2016/07/predatory-property-managers-renting-out-auckland-garages.html>

⁴²"Property manager allegedly told illegal tenant to lie to council", 30 July 2016 <https://www.newshub.co.nz/home/new-zealand/2016/07/property-manager-allegedly-told-illegal-tenant-to-lie-to-council.html>

⁴³"Illegal rental of office space to Wellington family created 'chilling' risks", 7 June 2017, https://www.nzherald.co.nz/nz/news/article.cfm?c_id=1&objectid=11871453



Property Manager allegedly stole nearly \$27,000 from 30 different tenants

In 2015, the Northern Advocate reported that a property manager pled guilty to theft (by a person in a special relationship) for stealing \$26,296 from 30 separate tenants while working as an employee for a property management company in Whangarei.⁴⁴ The property manager stole this money through a combination of not lodging her tenant's bonds (in whole or in part) and withdrawing money from the property management company's bank account. The theft was only discovered following the sale of the property management company she was employed with, by which time the property manager had set up her own property management company. She was sentenced to home detention.⁴⁵

Property Manager allegedly admitted to a Parliamentary Select Committee that she would check through tenant's bank statements to see if they spent too much on KFC

In August 2018, a Stuff.co.nz article reported that a property manager allegedly admitted that it was common practice to ask to see prospective tenant's bank statements to see whether they could afford rent.⁴⁶ New guidelines on what landlords can collect from tenants were released on 19 August 2019 by the Office of the Privacy Commissioner. REINZ were consulted in this process. Under the guidelines, current expenses should not be collected when assessing whether a tenant is suitable for the tenancy or not.⁴⁷

Tenants allegedly unsuccessful due to race

In January 2018, the NZ Herald highlighted that some unprofessional property management behaviour occurs because some property managers are unaware of basic anti-discrimination laws. A property manager explained to one couple that their application to rent the property was unsuccessful because they were not "Asian or Chinese" and

therefore would not fit the landlord's criteria. The article outlined that the couple would be making a complaint to the Human Rights Commission as a result.⁴⁸

Boarding House advertised to students as studio rooms

In March 2017, the Otago Daily Times reported on the allegedly common scenario of boarding house property managers letting 'studio rooms' to students (with the facilities shared between tenants) but requiring them to enter year-long fixed-term agreements as if they were separate dwellings.⁴⁹ According to the Residential Tenancies Act 1986, boarding house tenants may end their tenancies on 48 hours' notice. In one case, the Tenancy Tribunal ordered the property manager to refund rent of \$1190.44 to a tenant who ended her boarding house tenancy after finding mould and vomit in her room. Separately, the Tribunal found that the property was a boarding house, even though the agreement provided that the parties agreed that it was not for a boarding house. This property had 28 bedrooms, one kitchen, one laundry and two bathrooms.

Allegedly not disclosing details of earthquake-prone building to tenants

In November 2017, the NZ Herald reported that a commercial property manager (and licensed real estate agent) was accused of misconduct for his behaviour prior to the February 2011 earthquake.⁵⁰ It was alleged that following the September 2010 earthquake and while he was managing the property (without an agreement) he received an email from an engineer who had assessed the property outlining that building was "structurally unsafe" and "untenantable" but did not tell the building's tenants. In the February 2011 earthquake, an employee of one of the tenant businesses was killed while in the building.

⁴⁴"Manager stole bond money", 19 Feb 2015, http://www.nzherald.co.nz/northern-advocate/news/article.cfm?c_id=1503450&objectid=11404564

⁴⁵"Victims think sentence 'light'", 14 May 2015, https://www.nzherald.co.nz/northern-advocate/news/article.cfm?c_id=1503450&objectid=11448501

⁴⁶"KFC test for tenants: Property managers asking for bank statements", 8 August 2018 <https://www.stuff.co.nz/business/106101643/kfcbuying-tenants-asked-for-bank-statements>

⁴⁷"Privacy Act guidance for landlords and tenants", 19 August 2019 <https://www.privacy.org.nz/news-and-publications/guidance-resources/privacy-act-guidance-for-landlords-and-tenants/>

⁴⁸"Kiwi couple denied home based on race and marital status", 23 January 2018 http://www.nzherald.co.nz/nz/news/article.cfm?c_id=1&objectid=11979688

⁴⁹"Students still caught up in illegal tenancies", 24 March 2017, <https://www.odt.co.nz/news/dunedin/students-still-caught-illegal-tenancies>

⁵⁰"Christchurch property manager accused of misconduct following fatal building collapse in Christchurch earthquake" 7 November 2017 http://www.nzherald.co.nz/nz/news/article.cfm?c_id=1&objectid=11941540



Boarding House tenants allegedly forced to use toilet at restaurant

In June 2017, *Stuff.co.nz* reported on a range of illegal boarding houses in Auckland.⁵¹ One such property in Otahuhu had been ordered to be fixed or closed two months prior to the article but still had six tenants living there, paying up to \$250 per week each to the property manager for either a room or one of the three “decrepit caravans”. As the sole toilet was destroyed, the tenants were forced to use the toilet at the nearby KFC or petrol station. Additionally, every room in the property lacked doors, window panes and a working stove. The property manager attended the property on a weekly basis and took the residents’ WINZ supplied cash-flow cards to an ATM to extract the rent, but according to one tenant ignored his request to undertake repairs. The article suggests that these tenants are left with little recourse as the property is probably better than their alternative, which may be living on the streets. The article also noted that Hon Carmel Sepuloni submitted a petition to Parliament calling for a legislative review and better regulation of the industry.

Property Manager allegedly claimed flood-prone garage rented on ‘as is’ basis

In August 2017, *Stuff.co.nz* reported that a property manager claimed that she had rented out a property with a flood-prone garage on an ‘as is where is’ basis.⁵² The garage, which had been converted into two separate bedrooms (to supplement the three bedroom property), flooded on three separate occasions causing \$15,000 worth of damage. While the property manager installed a pump and the landlord reduced the rent (as the two ‘bedrooms’ were uninhabitable), the Tenancy Tribunal outlined that the garage area were not legally consented as sleeping quarters and reduced the rent accordingly.

Students allegedly given 24 hours to accept new rental increase

In January 2018, the NZ Herald reported that a group of five Wellington students were given 24 hours to enter into a new

tenancy agreement that would provide for a rent hike of \$36 extra per week each, otherwise they “risked losing their flat” following a new property management agency taking over the management of the property.⁵³ According to the article, the students were considering their options.

Rent Week Investigation

As part of The Spinoff’s ‘Rent Week’ investigation in March 2017, Investigative Reporter Jess McAllen reviewed a series of Tenancy Tribunal orders and outlined an analysis of a series of decisions in which the Tenancy Tribunal had highlighted particularly unprofessional behaviour by property managers (and landlords).⁵⁴ Some of the unprofessional behaviour by property managers included:

- Following a tenant’s request for compensation due to a long-term leak resulting in stained carpet and mouldy drapes in the main bedroom, the property manager was found to have issued a retaliatory notice by terminating the tenancy. The smell was so extensive that it required the tenant to move into one of her children’s bedrooms. McAllen noted the previous tenant had suffered the same problem
- A property manager who was found to have tried to terminate a boarding house tenancy by issuing a retaliatory notice to the tenant after he asked her to investigate who it was that stole his chicken from the fridge. The Tenancy Tribunal adjudicator was ‘satisfied’ that the notice of termination was “either wholly or partly in response to” the tenant’s request to investigate the missing chicken
- A tenant complained three weeks into his tenancy that there was a “nauseating smell” in the kitchen which he believed was due to decomposing rats. The property manager allegedly outlined to him that if the smell was from a carcass “it will decay and the smell will disappear soon.” After six months, the tenant complained again of a rotting smell. Experts appointed by the Tribunal concluded it was indeed due to a rat carcass, and found that the property manager had failed to take preventative action.

⁵¹“Greed, desperation, and squalor – life in illegal boarding houses” 4 June 2017 <http://www.stuff.co.nz/national/93141424/councils-cant-shut-down-dangerous-boarding-houses-fast-enough-as-homeless-kiwis-are-forced-into-houses-with-no-toilets-no-kitchens>

⁵²“Property manager claims family of four rented flood-prone bedrooms in garage ‘as is’” August 25, 2017 <https://www.stuff.co.nz/business/property/96143521/you-rented-it-you-live-in-it-property-manager-claimed-family-of-four-rented-flood-prone-bedrooms-in-garage-as-is>

⁵³“Students given 24-hour ultimatum to accept rent hike”, 16 January 2018 http://www.nzherald.co.nz/nz/news/article.cfm?c_id=1&objectid=11975326

⁵⁴“A grand tour through the bad landlords and worse letting agents of the tenancy tribunal”, 24 March 2017. <https://thespinoff.co.nz/society/24-03-2017/a-grand-tour-through-the-bad-landlords-and-worse-letting-agents-of-the-tenancy-tribunal/>



The agency was fined \$526.44 for inconvenience and stress

- A property manager was found to have unjustifiably deducted \$500 worth of cleaning expenses from the Tenant's bond, when in fact the Tenancy Tribunal found that the premises were "reasonably clean and tidy." Additionally, the property manager (on behalf of the landlord) claimed compensation for two windows that blew out of the Wellington property. This was rejected by the adjudicator who noted that in Wellington where strong winds are "not only a possibility but a probability, windows should be sufficiently secured such that they cannot be blown out"
- A property manager sent a "lewd" message to his tenant and attempted to blame said behaviour due to his texting while driving, an excuse which the Tenancy Tribunal rejected.

At the conclusion of 'Rent Week', the editor of The Spinoff reported on the feedback the online publication had received from everyday renters about the issues they had with both property managers and landlords alike.⁵⁵ This included that a van without a current Warrant of Fitness which, as of March 2017, was being rented to persons in Queenstown for \$100/week, compared with \$65/week the prior year.

Recent & Future Reform to Residential Tenancies Act 1986 ("RTA")

In July 2015, the Government at the time announced that the RTA would be strengthened with new requirements for insulation, smoke alarms, better enforcement and faster resolution of abandoned tenancies. These reforms were confirmed in amendments passed later that year.

These changes followed a trial in 2014 of 'Warrant of Fitness' standards on a sample of 400 Housing New Zealand Corporation properties.⁵⁶ The Cabinet Paper estimated that approximately 270,000 private residential rental properties are inadequately insulated and that approximately 120,000 rental properties do not have functional smoke alarms.⁵⁷ According to 2013 Census statistics – listed below – approximately 59.6% of rental properties are inadequately insulated and 26.5% of rental properties do not have functional smoke alarms.⁵⁸

The amendments to the RTA in 2015 (and the subsequent Regulations)⁵⁹ resulted in the introduction of the following changes:⁶⁰

- A new requirement for smoke alarms to be in all residential rental properties from 1 July 2016
- New requirements for ceiling and underfloor insulation in residential rental properties – with specific exemptions – by 1 July 2016 for Housing New Zealand and Community Housing Provider tenancies, and by 1 July 2019 for all remaining tenancies
- From 1 July 2016, all property managers or landlords must include a statement in all new tenancy agreements about the extent of insulation in the property. This is intended to help tenants make informed choices
- Failure by the Landlord (or property manager) to comply with the smoke alarm or insulation requirements will be an unlawful act under s45(1A), with a maximum penalty of \$4,000
- Failure by the Landlord (or property manager) to make a statement about the extent of the insulation in the property, or providing knowingly misleading information will attract a fine of \$500
- Increased powers of MBIE to investigate landlords and enforce standards against 'slum' landlords.

The changes to the RTA in terms of smoke alarms and insulation have increased the level of obligations upon rental homeowners, and property managers, as agents of the Landlord, will be expected by their principals to ensure that rental properties adhere to these standards.

⁵⁵"After rent week: we know that renting in NZ is a disaster. But it can be fixed", 27 March 2017 <https://thespinoff.co.nz/politics/27-03-2017/what-did-we-learn-in-rent-week-that-renting-in-nz-is-a-disaster/>

⁵⁶Cabinet Social Policy Committee "Cabinet Paper: Insulation, smoke alarms and other residential tenancy improvements", p.1

⁵⁷Ibid

⁵⁸See Table 13, Statistics New Zealand (2014). 2013 Census QuickStats about housing – tables. Available from www.stats.govt.nz

⁵⁹Residential Tenancies (Smoke Alarms and Insulation) Regulations 2016

⁶⁰<https://www.beehive.govt.nz/release/warmer-safer-rental-home-law-passed>



Healthy Homes Guarantee Act 2017

As referred to earlier, the Healthy Homes Guarantee Act 2017 was passed in late 2017 and introduced minimum standards for heating, insulation, ventilation, moisture and drainage and draught stopping in rental homes.⁶¹ The Residential Tenancies (Healthy Homes Standards) Regulations 2019 stipulate the requirements under each standard.⁶²

As of 1 July 2019, landlords/property managers must include a separately signed statement confirming intention to comply with the healthy homes standards as per section 13A(1CA) of the Residential Tenancies Act 1986.⁶³ From 1 July 2021, landlords/property managers must ensure that their rental homes comply with the standards within 90 days of any new or renewed tenancy.

While it is too early to definitively comment on the impact of these regulations, it may be assumed that these regulations will rely on those managing rental properties proactively complying with these standards in an ethical manner as they will arguably be in a better position than their tenants to assess whether their property complies.

Further Changes to the RTA

The Residential Tenancies Amendment Act 2019 ("Act") recently came into law on 30 July 2019 and makes three key amendments to the Residential Tenancies Act 1986.⁶⁴ There are several commencement dates under the Act.

The first key change brought under the RTA, is that tenants will be partially responsible for careless damage to the rental premises which means that they will either have to pay a maximum of four weeks' rent or the landlord's insurance excess (if applicable), whichever is lower. Landlords will be required to provide insurance information in any new tenancy agreement from 27 August 2019. Insurance information will include the amount of excess relevant to the tenant's liability and that the tenant can request a copy of the insurance policy.

The second change is that tenants will be able to seek relief from the Tenancy Tribunal where it is found that the landlord has rented unlawful premises to them.

The final change pertains to contaminated premises. Any contaminant, including methamphetamine will be dealt with by Regulations which are set to be developed within the next year. Regulations will be able to set maximum acceptable levels for those contaminants, testing methods and decontamination processes.⁶⁵

Result

As property managers are the intermediary between landlords and tenants, landlords will be entrusting that their property managers comply (or determine whether the exemptions would apply) with the Healthy Homes legislation and recent changes to the RTA as it will be them – in most cases – who suffer the consequences from an adverse ruling from the Tenancy Tribunal.

Given the increased power of MBIE to monitor and enforce compliance with the RTA, landlords who manage the tenancy themselves may feel encouraged to engage property managers who they would perceive are adequately and competently trained to comply with the requirements under the aforementioned legislation. The importance of the role of property managers (or managing properties compliant with the Act) is therefore soon to be highlighted.

Comparison with Foreign Countries

Australia

As at January 2018, every state in Australia regulates residential property managers. South Australia is the most recent state to regulate, following a law passed in September 2017.⁶⁶ This followed extensive lobbying by the Real Estate Institute of South Australia.⁶⁷ The Minister responsible there outlined that regulation was required to ensure that both tenants and

⁶¹See s6 Healthy Homes Guarantee Act 2017

⁶²Residential Tenancies (Healthy Homes Standards) Regulations 2019

⁶³See s13A(1CA) Residential Tenancies Act 1986

⁶⁴Residential Tenancies Amendment Act 2019

⁶⁵Ibid

⁶⁶Land Agents (Registration of Property Managers and Other Matters) Amendment Act 2017

⁶⁷See REISA, Real estate body calls for stronger consumer protection, 11 February 2013 <https://www.reisa.com.au/news/real-estate-body-renews-calls-for-stronger-consumer-protection#.VeOQFdKqPBe>



landlords can have confidence that they are dealing with a competent, trained professional.⁶⁸ The different Australian states have taken differing approaches to regulation, with New South Wales and South Australia providing for a separate licence/ registration for property managers (and in South Australia, real estate agents will be able to act as property managers) whereas other states provide the same licence for both activities.

United Kingdom

Regulation of property managers has been introduced in Wales, Scotland and to a limited extent in England since the 2009 Review in New Zealand.

Wales

The Welsh government has introduced ground-breaking regulation of property managers that will regulate landlords who manage their properties themselves in addition to regulating property managers. The Housing (Wales) Act 2014 came into force in the Welsh Autumn 2015 and introduces the 'Rent Smart Wales' programme. Under this programme, property managers will be required to be licensed in order "to ensure that people have access to a decent, affordable home."⁶⁹ Additionally, all landlords must be registered, and those that provide letting services themselves (instead of using a licensed property manager) must be licensed.⁷⁰ The Act follows the success of the 'Landlord Accreditation Scheme' that was trialled by the Cardiff Council and managed training for landlords and property managers. The benefits of the scheme were seen as two-fold, as "licensing will improve management standards by ensuring landlords and letting agencies are aware of their responsibilities."⁷¹ It is argued that professionalism will ensure that those who undertake training will have more success than previously.

England

From October 2014 all those who undertake the work of 'lettings agents' or of property management are required to belong to one of three Government approved redress schemes ("Schemes").⁷² Fines of up to £5,000 can be issued to those who do not register to one of these Schemes. Letting agents must also now publish a full tariff of their fees on their website and in their offices.⁷³

The official explanatory note for the Schemes explains that the Schemes were needed because the private rented sector is "rapidly increasing – up from 2.4 million households in 2005 to 4.0 million in 2012."⁷⁴ The explanatory note also records that letting agents handle between half and two-thirds of all rental properties and around 40% of new build property in England is rented.

In addition it was considered important that people owning or living in property:⁷⁵

"have the ability to complain if they receive poor service from their agent. Common complaints about lettings and property management in the private rented sector are around how agents handle the security and holding deposits, missed appointments, pressuring tenants to take tenancies, poor customer service, out of date and misleading adverts and opaque and variable fees."

The intention of the Scheme is that the people who deal with property managers are "able to complain to an independent person about the service they have received."⁷⁶ The scheme has relative flexibility to decide who they hear a complaint from due to the decision not to define a 'complaint' within the legislation.⁷⁷

⁶⁸See "Dodgy residential property managers on notice", John Rau MP, 31 May 2017 https://www.agd.sa.gov.au/sites/g/files/net2876/f/20170531-mr-ag-residential_property_managers.pdf?v=1496277529

⁶⁹See [http://www.assembly.wales/Laid%20Documents/PRI-LD9558-EM%20-%20Housing%20\(Wales\)%20Bill%20-%20EXPLANATORY%20MEMORANDUM-18112013-251741/pri-ld9558-em-e-English.pdf](http://www.assembly.wales/Laid%20Documents/PRI-LD9558-EM%20-%20Housing%20(Wales)%20Bill%20-%20EXPLANATORY%20MEMORANDUM-18112013-251741/pri-ld9558-em-e-English.pdf)

⁷⁰<https://www.rentsmart.gov.wales/en/landlord/landlord-licensing/>

⁷¹See "Evaluation of Rent Smart Wales Baseline Evaluation Report", 22 November 2016, <https://gwedhill.gov.wales/docs/caecd/research/2016/161122-evaluation-rent-smart-wales-en.pdf>, p.13

⁷²See the Redress Schemes for Lettings Agency Work and Property Management Work (Requirement to Belong to a Scheme etc (England) Order 2014.

⁷³See W Wilson, The Regulation of private sector letting and managing agents (England), House of Commons Library Standard Note SN/SP/6000, 27 March 2015, para 1.5

⁷⁴See Explanatory memorandum to The Redress Schemes for Lettings Agency Work and Property Management Work (Requirement to Belong to a Scheme etc (England) Order 2014

⁷⁵Ibid

⁷⁶Ibid

⁷⁷Ibid



In recent years, the Government has taken steps to implement additional quasi-regulation for property managers, including a requirement those who rent properties to 5 or more people in two or more separate households will need to be licensed.⁷⁸ There are also plans in place to ban letting fees.⁷⁹

Local councils have been given the power to take action against certain landlords who do not abide by certain standards and can issue fines of up to £30,000. Additionally, by April 2018, the Government plans to set up a database of rogue landlords and letting agents and ban certain landlords and property managers from operating.⁸⁰

Scotland

Scotland has recently introduced a requirement for all property managers to be registered by October 2018 and abide by a Code of Practice.⁸¹ It is a criminal offence to fail to register, and those that fail to register face fines of up to £50,000 and up to 6 months imprisonment (or both). Landlords, tenants and Scottish Ministers are able to seek redress from a tribunal if it is found that the Code of Practice has been breached. The implementation of this regime followed the introduction of licensing requirements in 2012 for certain property managers (referred to as 'property factors') who manage common parts of land owned by two or more people, and usually get paid a fee to look after the repairs and maintenance of the common area, not dissimilar to body corporate managers.

The legislation surrounding property factors was required due to the fact that Scotland has a large amount of rental housings owned by multiple owners. Approximately 36% of the Scottish population – 780,000 households – live in a tenement flat, maisonette or apartment.⁸² Due to the fact that 50% of people in Scotland who live in a privately owned flat or an apartment have a property manager, regulation was seen

as necessary over this growing part of the market. The Office of Fair Trading found that although 70% of people were happy with their property manager, this left a "substantial minority" who were less happy.⁸³ Of those who had made a complaint to their property manager, up to two thirds were unhappy with how it was handled.⁸⁴

Furthermore, the Office of Fair Trading found that many consumers did not understand their rights and obligations and were unsure of what they should expect from their property managers and the corresponding level of service they should receive. This led to "a very low level of switching" from one property manager to another, even compared with other industries such as banking or energy which also has very low levels of switching. Consumers in those industries also had problems understanding the processes required to switch to another property manager.⁸⁵ The Office of Fair Trading found that competition was low between property managers and those with complaints had 'limited scope for redress'.⁸⁶ Due to the lack of effective competition in the market, along with the complexity of the legal situation and the difficulties with switching, it was determined that "there is a need for an effective independent complaints and redress mechanism which is easily accessible to the owners of shared property."⁸⁷

Ireland

Ireland has included property management activities within the definition of a 'property service' and as such is covered by the Property Services (Regulation) Act 2011. They are regulated by the same authority that regulates real estate agents, and auctioneers.⁸⁸

⁷⁸See more information at <https://www.gov.uk/government/news/rogue-landlords-put-on-notice-as-government-announces-tough-new-powers> It is estimated that this imposition will affect 160,000 households

⁷⁹See more information at <https://www.gov.uk/government/news/government-action-to-ban-letting-agent-fees>

⁸⁰See more information at <https://www.gov.uk/government/news/government-supports-new-measures-to-improve-the-safety-of-tenants>

⁸¹Regulated by Part 4 of the Housing Act (Scotland) 2014. See more information at <https://beta.gov.scot/policies/private-renting/regulation/#houses-in-multiple-occupation-licensing> <https://beta.gov.scot/policies/private-renting/regulation/>

⁸²See Property Managers in Scotland: A market study, Office of Fair Trading, February 2009, p.4

⁸³Ibid, p.5

⁸⁴Ibid, p.5

⁸⁵Ibid, p.5

⁸⁶Ibid, pp.5–6

⁸⁷Ibid, p.5

⁸⁸See s2 Property Services (Regulation) Act 2011. The Property Services Regulatory Authority is the regulator and was set up by Part Two of the aforementioned Act



It was said that “the lack of transparency, and the absence of proper consumer protection standards, had contributed in no small way to the problems of recent years.”⁸⁹ The introduction of legislation to cover property management activities was seen by the Irish legislators as a way to rectify these unfortunate issues.

According to figures listed on the regulator’s website, as of 4 September 2015, 4,912 out of a possible 5,779 licence holders have registered to carry out services for the letting of land either solely or in addition to selling and purchasing of land and auctioneering.⁹⁰

USA

Each state in the USA has slightly different rules for the regulation of property managers but most regulate them in some form.⁹¹ States such as New York, California, Texas and Illinois require ‘brokers’ who engage in the business of property management to have a ‘real estate broker’s licence’ and are regulated, but have different requirements for their staff.⁹² Illinois requires staff of brokers to have a license as a ‘leasing agent’ whereas the state of New York does not.

South Dakota has taken the rare step of regulating brokers who undertake property management activities by requiring them to have a ‘Property Management Licence’ which is a form of ‘restricted broker’s licence’, the obligations of which are less onerous than that of an ordinary ‘broker’s licence’.⁹³

Canada

The majority of Canadian states also regulate property managers in some form. Alberta, Saskatchewan, Manitoba and Quebec regulate property managers within the same licensing

regime as real estate agents. British Columbia has a separate licensing regime for property managers who are able to apply for four different levels of licence. Ontario, a state of 13 million people, has introduced the Protecting Condominium Owners Act 2015 that regulates those who manage Condominiums in the state.⁹⁴

The smaller Eastern states of Canada do not regulate property managers.

In 2012, Statistics Canada undertook significant research into the funds that pass through property managers’ accounts across the different states and the results highlighted the need for regulation. For example, in Alberta, a state of similar size to New Zealand with a population in 2011 of 3.7 million people,⁹⁵ property managers had an operating revenue of \$CAN 663.7 million and an operating profit margin of 23% according to a sample survey of 3,414 collection entities.⁹⁶

In the same study, property managers in British Columbia (a state with a population of 4.5 million in 2011) had operating revenue of \$CAN 914.4 million and a corresponding operating profit margin of 14.8%.⁹⁷ The study also found that in 2012, the real estate rental, leasing and property management industries across the whole of Canada (population 34,752,100 in 2012) generated \$CAN 85.7 billion in total operating revenue, an amount up 3.6% from 2011.⁹⁸ The operating profit margin across the whole country was 20.4% in 2012.⁹⁹

While the statistics in Canada will not necessarily correspond to the amounts of money that property managers in New Zealand deal with across their portfolios, it provides evidence for the fact that as the industry increases in size, the amount

⁸⁹See Minister Shatter establishes new Property Services Regulatory Authority, 4 April 2012, <https://merriestreet.ie/en/News-Room/Releases/minister-shatter-establishes-new-property-services-regulatory-authority.html>

⁹⁰See List of Current Licence Holders, http://psr.ie/en/PSRA/Pages/Register_Licensed_PSP

⁹¹A brief comparison of the licenses required for each state can be found here <https://www.allpropertymanagement.com/propertylaw/> Accessed 19 January 2018

⁹²See Appendix 2

⁹³See South Dakota Codified Law (SDCL) Chapter 36-21A-10

⁹⁴See “Condominium law changes” <https://www.ontario.ca/page/condominium-law-changes>

⁹⁵See Statistics Canada, CANSIM, table 051-0001

⁹⁶See Statistics Canada, CANSIM, table 352-0017 and Service Bulletin: Real Estate Rental and Leasing and Property Management, 2012, Statistics Canada, Catalogue no. 63-249-X

⁹⁷Ibid

⁹⁸See Service Bulletin: Real Estate Rental and Leasing and Property Management, 2012, Statistics Canada, Catalogue no. 63-249-X, p.1. See also Fig. 5

⁹⁹Ibid



of consumers' money that is being dealt with will correspond significantly. It is pertinent that all the Canadian states that have a population between 1 and 9 million have undertaken reform to regulate all property managers to protect those who use their services.¹⁰⁰ In New Zealand, during the 2009 review of regulation of property managers, most submitters at the time estimated that the value of property management to the New Zealand economy was in the high millions or even billions of dollars.¹⁰¹

Possible Forms of Regulation

In considering whether property managers should be regulated, it is essential to take into account the cost and implementation method of such regulation. There are many forms of occupational regulation as already outlined in the Cabinet Policy Framework for Occupational Regulation 1999. It is interesting to note, however, that during the 2009 review 82% of submitters on the question of regulation indicated that they had a preferred regulator in mind as opposed to only 18% who did not support having a regulator.¹⁰²

The burden of implementation could be minimised by making appropriate amendments to existing related legislation. In large, there are currently two existing regimes which are related to property managers and their activities. These are the Residential Tenancies Act and the REA Act.

The Residential Tenancies Act currently does not make any distinction between owner-landlords and property managers acting for landlords. Amendment by adding new sections dealing with property managers may be necessary if regulation is implemented under this Act. Arguably, however, the Act could include new provisions similar to the existing s16A and expand its effect to agents appointed regardless of whether the landlords reside in New Zealand. Assuming responsibilities of principals (property owners) as agents differ significantly from regulating that occupation in any event – both in its purpose and the intended effect.

In contrast, inclusion of property managers under the **REA Act** will be a form of occupational regulation. In Appendix 3 to this Discussion Paper, possible amendments to the REA Act have been outlined for consideration and discussion.

Alternatively, **self-regulation** is an option. Self-regulation ought to consider, as a minimum, measures to ensure property managers:

- Have a minimum level of education to operate, such as holding the NZ Certificate in Residential Property Management
- Have ongoing education requirements, to ensure property managers stay up-to-date with law changes
- Hold tenant and landlord funds in a trust account
- Hold appropriate insurance
- Be registered with a professional body that requires adherence to a Code of Conduct
- Are subject to fines or sanctions if they don't adhere to the Code of Conduct.

QUESTION TO CONSIDER:

What is the best way to regulate
Property Managers in New Zealand?

¹⁰⁰See Statistics Canada, CANSIM, table 051-0001. This includes Manitoba, Saskatchewan, Alberta, British Columbia & Quebec

¹⁰¹Review of Regulation of Property Managers – Summary of Submissions, Ministry of Justice 2009

¹⁰²Review of Regulation of Property Managers – Summary of Submissions, Ministry of Justice 2009



APPENDICES

Appendix 1: Extracts from Hansard in Support or Against the inclusion of Property Managers within the REA Act

Appendix 2: Regulation of Residential Property Managers in Overseas

Appendix 3: Possible Amendments to Real Estate Agents Act 2008

Appendix 4: Statistics on Rental Housing Market

Fig. 1: Mean Rent based on Rental Bond Data from MBIE

Fig. 2: Number of Renters compared to Owners

Fig. 3: Proportion of Property Managers Within Real Estate Sector (2013 Census)

Fig. 4: Trend of Various Sectors in Real Estate (2006 & 2013 Comparison)

Fig. 5: Canadian Statistics on Money Handled by Property Managers

Appendix 1:

Extracts from Hansard in Support or Against the inclusion of Property Managers within the REA Act

Stage	Comments in SUPPORT of the Inclusion of Property Managers	Comments AGAINST Inclusion of Property Managers
1st Reading	SIMON POWER , National Party, 1st Reading “Why, if the Minister is so determined to reform the negatives in the real estate industry, property management is excluded from this legislation. Why is an industry that holds trust account moneys on behalf of clients excluded from this legislative framework? ”	
	KATHERINE RICH , National Party, 1st Reading “It is utterly and totally bizarre, when one in five complaints is as a result of some kind of property management issue, not the real estate aspect, at all.”	
	KATE WILKINSON , National Party, 1st Reading: “Real estate involves not only buying and selling property. An important part also relates to property management, and this has been totally ignored by this Government. An integral part of property management is the handling of funds . The Minister himself has highlighted the mishandling of funds as one of the rules that should be applied. So why on earth, then, is it not addressed in this bill?” “ Hundreds of millions of dollars pass through the bank accounts of property managers. What happens to missing rent moneys? The institute, under this bill, has no jurisdiction to deal with complaints about missing rent moneys . There is no requirement to hold the moneys in a trust account...If residential property managers are not covered by the new regime, then gaps in the current laws will leave consumers vulnerable .” “If anything goes wrong, the only recourse for consumers may be via the courts . This is contrary to the purpose of the bill, which, of course, is consumer protection .”	
Report of the Select Committee	THE SELECT COMMITTEE “We would expect an appropriate regime to include, at a minimum, trust account and audit requirements , and provision for an independent disciplinary body .” “We are concerned that there would only be criminal or civil remedies for any misappropriation of funds by property managers, and no other disciplinary regime , if this bill comes into force.” National Party reasons for not supporting at SC: “A common theme of the majority of submitters was the concern that property management is not included in the bill...Property management is often an integral part of real estate work and National believes that if the real objective of the bill is consumer protection then property management should be included.”	THE SELECT COMMITTEE “We examined the possibility of amending the bill to apply to property managers, but such an amendment would be outside the scope of the bill as introduced. The focus of the bill as introduced is the regulation of behaviour regarding the sale and purchase of land interests.” “Whilst many real estate agents undertake a property management function, this does not make property management a real estate transaction.”
2nd Reading	KATE WILKINSON , National Party, Speech in 2nd Reading “Property management is still excluded, and when we look at the failures of Blue Chip and others, it makes one wonder why it has still been excluded.” “Property managers have carte blanche to carry on their business without any checks or balances, without any trust account control, and without any audit—whether a spot audit or a regular audit.” “Actually, if this bill were really about consumer protection, it would include property management, and it would not impose even more costs on the consumer.”	CHARLES CHAUVEL , Labour Party, 2nd Reading “The Minister will put in place a review. We heard some evidence on that point. I think that the select committee members by and large were persuaded that there was merit in looking further at the issue of whether property managers should come within a comprehensive regime.”

	<p>TARIANA TURIA, Maori Party, 2nd Reading</p> <p>"We know that 56 percent of the Māori population are not in owner-occupied dwellings, as opposed to 31 percent of non-Māori. In real numbers, two-thirds of our population do not own their residence. The importance of having an effective oversight of the entire industry is crucial. In effect, whether one is renting or owning is irrelevant. The key thing is that the process is transparent, and, of course, that all steps have been taken to ensure that people are not exploited by unscrupulous traders or misleading representation."</p> <p>PETER DUNNE, United Future, 2nd Reading</p> <p>"To suggest that dealing with property management is outside the scope of this bill is ludicrous when the Real Estate Agents Licensing Board already, within the provisions of the Act that is being repealed, deals with matters relating to the conduct of real estate agents who trade as property managers."</p>	<p>SUE BRADFORD, Green Party, 2nd Reading</p> <p>"In the end there was clear advice to the committee that to try to amend the bill to include property managers was outside its scope."</p> <p>LYNNE PILLAY, Labour Party, 2nd Reading, Sponsor of the Bill</p> <p>"We heard from independent people who do not work in the real estate industry but who work in property management. They came to the committee and said: "We support regulation but we won't be covered.</p> <p>We support looking into this and covering the whole industry around standards." And we say: "Good on you for doing that." That is why there is a commitment to review the status of property management, and should legislation be required—and I believe that will be the case—then that will come into effect. The Minister has made the commitment that it will come into effect at the same time as this legislation comes into effect."</p>
Committee Stage	<p>JACQUI DEAN, National Party, Committee Stage</p> <p>The "glaring omission" of Property Managers creates "inequities within the bill"</p> <p>"Those of us who have children going out into the world and becoming tenants in properties, or flatting if they are students, or going into the workforce, know that they are the very vulnerable young people who have to come into contact with property managers."</p> <p>"This bill is not worth much if it does not address the real issues being faced particularly by young people who have to deal with property managers."</p> <p>The proposed Review "does not provide much comfort to those people who deal on a day-to-day basis with property managers."</p> <p>KATE WILKINSON, National Party, Committee Stage</p> <p>"Because sometimes the funds are being held for overseas owners of property who might perhaps not check their accounts more than once a year, when they have to do their tax returns."</p>	
3rd Reading	<p>KATE WILKINSON, National Party, 3rd Reading</p> <p>"Property managers have more opportunity to misappropriate funds than do real estate agents, because of the length of time that the money is held in their trust account."</p> <p>SIMON POWER, National Party, 3rd Reading</p> <p>It is a "mised opportunity" not to include Property Managers</p> <p>"Property management is left outside the bill, despite the Government being told time and time again by submitters that it should be included in it"</p>	<p>CLAYTON COSGROVE, Labour Party, 3rd Reading</p> <p>"We have announced that there will be a review—a review that will take place within the 14-month period before this legislation is implemented after it is enacted. If the review provides evidence and fact, not hearsay and piffle...and if legislation is required, that legislation will be brought to the House, enacted, and implemented, and it will come into force at the same time as this legislation, in 14 months' time."</p>

SOURCED

Hansard:

(11 December 2007) 644 NZPD 13813. http://www.parliament.nz/en-nz/pb/debates/debates/48HansD_20071212_00000964/real-estate-agents-bill-%E2%80%94first-reading

(2 September 2008) 649 NZPD 18357. http://www.parliament.nz/en-nz/pb/debates/debates/48HansD_20080904_00000197/real-estate-agents-bill-%E2%80%94second-reading

(2–4 September 2008) 649 NZPD 18362. http://www.parliament.nz/en-nz/pb/debates/debates/48HansD_20080904_00000240/real-estate-agents-bill-%E2%80%94second-reading-in-committee

(2–4 September 2008) 649 NZPD 18452. http://www.parliament.nz/en-nz/pb/debates/debates/48HansD_20080904_00001247/real-estate-agents-bill-%E2%80%94third-reading

Select Committee Reports:

Real Estate Agents Bill 2008 (185–2) (select committee report) at 22. https://www.parliament.nz/resource/mi-NZ/48DBSCH_SCR4082_1/6f184f52301969dbd89e1391836d8dcff0c5ad71

NOTE: Emphasis has been added to the speech (in orange and/or bold) at the discretion of REINZ and repetitive comments have been omitted.

Appendix 2:

Regulation of Residential Property Managers in Overseas

KEY:

	Residential Property Managers are regulated under the legislation applicable to Real Estate Agents
	Residential Property Managers are regulated separately from Real Estate Agents
	No regulation for Residential Property Managers
	Other Arrangement

SUMMARY:

Australia	All states except for SA regulate property managers at present, with SA developing regulations to regulate property managers.
United Kingdom	Property managers are regulated in Scotland and Wales. In England, some property managers will be regulated in the near future but currently all must join a compulsory redress scheme.
Ireland	Property managers are regulated together with real estate agents.
USA	Most states in the USA have some form of regulation of property managers and most are regulated under the legislation that applies to real estate agents.
Canada	Most provinces and territories of Canada have some form of regulation of property managers. For example, much of Western Canada regulates property managers while the Far East does not. Ontario regulates condominium managers.

AUSTRALIA

NSW	Covered by Property, Stocks and Business Agents Act 2002. Regulated under a separate regime to Real Estate Agents
WA	Regulated by the Real Estate and Business Agents Act 1978. Includes the letting of services within the definition of a real estate transaction
QLD	Regulated by the Property Occupations Act 2014 ss26 and 27. The letting of properties and collecting of rents is included in the definition of real estate agent services. S27 allows for a "resident letting agent" licence for those collecting rents and letting lots in a building complex.
TAS	Regulated by the Property Agents and Land Transactions Act 2016. "Property managers" are included (along with real estate agents) within the definition of "property agents" and are required to be licensed.
NT	Regulated by the Agents Licensing Act 1979. Activities related to the letting and leasing of properties are included within the definition of 'real estate agents' and as such must be licensed.
ACT	Regulated by the Agents Act 2003. Includes leasing and collecting payment under the definition of carrying out business as a real estate agent.
VIC	Regulated by the Estates Agents Act 1980. Section 4(1)(c) – Property Managers are included within the definition of "estate agent".
SA	The Land Agents (Registration of Property Managers and Other Matters) Amendment Bill 2017 amends the Land Agents Act 1994 to regulate property managers under that Act.

UNITED KINGDOM

ENGLAND	Not all property managers are required to be licensed but from October 2014 they must belong to 1 of 3 Government Approved Redress Schemes. Fines of up to 5,000 pounds can be issued to those who do not register. Local councils are able to take action against 'rogue' landlords and property managers. Plans announced by the Minister to require regulation of certain property managers who look after properties with a large amount of tenants; introduce databases that list problematic landlords and property managers.
SCOTLAND	Regulated by the Real Estate and Business Agents Act 1978. Includes the letting of services within the definition of a real estate transaction.
WALES	Regulated by the Property Occupations Act 2014 ss26 and 27. The letting of properties and collecting of rents is included in the definition of real estate agent services. S27 allows for a "resident letting agent" licence for those collecting rents and letting lots in a building complex.
NORTHERN IRELAND	Regulated by the Property Agents and Land Transactions Act 2016. "Property managers" are included (along with real estate agents) within the definition of "property agents" and are required to be licensed.

USA

NY	Regulated by the Real Estate Licence Law 2015. A Real Estate Broker is defined as including those who "collect or offers or attempts to collect rent" on behalf of owners of properties and they are licensed the Real Property Law. Therefore, those who just manage the maintenance of the properties are not covered by the law.
CALIF.	Regulated by the Real Estate Law and Subdivided Lands Law, 10131 of the Business and Professions Code. The work of a property manager is included within the definition of a "broker" and is regulated by the code. However, a licensed real estate salesperson can work for a broker.
SOUTH DAKOTA	Regulated by the South Dakota Codified Law (SDCL) Chapter 36-21A-10. They come under a different licensing regime to 'brokers' and their license is known as a "restricted broker's licence." The requirements of this licence are much less extreme than that of a "broker's licence."
TEXAS	Regulated by The Real Estate License Act 2001, Sec. 1101.002. If they "control the acceptance or deposit of rent from a resident of a single-family residential real property" then they fit within the definition of a 'broker' and are required to be licenced under the same regime as Real Estate Agents.
ILLINOIS	Regulated by the Real Estate Licence Act 2000. Property management activities including collecting rent and advertising themselves as somebody who is in the business of renting real estate are covered within the definition of "broker." A person must also be licenced to be a "leasing agent" if they are employed by a broker to carry out these activities. This licence is different from a broker's licence and only enables them to engage in residential leasing activities.

CANADA

BRITISH COLUM.	Regulated by the Real Estate Services Act [SBC 2004]. There are four levels of licence from 'representative' to 'broker. Regulated separately from real estate agents.
ALBERTA	Regulated by the Real Estate Act – Chapter R-5 of the Revised Statutes of Alberta. Property Management comes under the definition of a "real estate broker" and is regulated by the same act as real estate agents.
SASK.	Regulated by The Real Estate Act – Chapter R-13 of the Statutes of Saskatchewan 1995 Property management comes under the same definition of "trade" as a Real Estate Agent and they are regulated under the same Act.
MANITOBA	Regulated by The Real Estate Brokers Act. Property Management activities are included within the definition of 'real estate services'. Regulated under same regime as Real Estate Agents.
ONTARIO	The Protecting Condominium Owners Act 2015, provides that managers of Condominiums must be licenced. This does not apply to property managers of other types of residences.
NOVA SCOTIA	Not Regulated under the Real Estate Trading Act. Position similar to New Zealand.
QUEBEC	Regulated by the Real Estate Brokerage Act, Civil Code. Includes the "lease of immovable property" within the definition of a broker. However, employees working for brokers do not have to be licensed.

Appendix 3:

Possible Amendments to Real Estate Agents Act 2008

- 1.1 Insert a defined term “property manager” in s.4, in the alphabetical order in which it falls in a similar way that ‘agent’ is currently defined:

“Property manager means a person who holds, or is deemed to hold a current licence as a property manager under this Act”.

Amend the term ‘licensee’ in s.4 to read:

*“licensee means an agent, a branch manager, a salesperson, **or a property manager**”.*

NB: The same amendment would need to be made wherever the consecutive licensee categories are mentioned; in s.4, in the definitions of “former licensee” and “licence”, and in s.12(1)(a), s.16(a), s.18(3)(b), s.25(b), s.37(1)(e), s.64(a)(i)–(iii), s.142 in the title and in the sub-section itself, s.143 and in s.156(1)(b).

- 1.2 Amend the term “**real estate agency work** or **agency work**” as follows under s.4:

Real estate agency work or agency work —

(a) means any work done or services provided, in trade, on behalf of another person for the purpose of bringing about a transaction;

(b) [any work done or services provided, in trade, on behalf of another person, for the purpose of managing or administering a tenancy to which the Residential Tenancies Act 1986 applies, or managing or administering any aspect of any such tenancy; and]

(c) includes any work done by a branch manager or salesperson under the direction of, or on behalf of an agent to enable the agent to do the work or provide the services described in paragraph (a); but

(d) does not include —

- (i) the provision of general advice or materials to assist owners to locate and negotiate with potential buyers; or
- (ii) the publication of newspapers, journals, magazines, or websites that include advertisements for the sale or other disposal of any land or business; or
- (iii) the broadcasting of television or radio programmes that include advertisements for the sale or other disposal of any land or business; or
- (iv) the lending of money on mortgage or otherwise; or
- (v) the provision of investment advice; or
- (vi) the provision of conveyancing services within the meaning of the Lawyers and Conveyancers Act 2006.

- 1.3 Under the definition of the term “**transaction**” in s.4, delete the reference to the words “(other than a tenancy to which the Residential Tenancies Act 1986 applies)” in (b) and insert an express inclusion of residential property management work as follows:

Transaction means any 1 or more of the following:

- (a) the sale, purchase, or other disposal or acquisition of a freehold estate or interest in land:
- (b) the grant, sale, purchase, or other disposal or acquisition of a leasehold estate or interest in land, **including any tenancy to which the Residential Tenancies Act 1986 applies:**

- (c) the grant, sale, purchase, or other disposal or acquisition of a licence that is registrable under the Land Transfer Act 1952:
- (d) the grant, sale, purchase, or other disposal or acquisition of an occupation right agreement within the meaning of the Retirement Villages Act 2003:
- (e) the sale, purchase, or other disposal or acquisition of any business (either with or without any interest in land).

(2) To avoid doubt, the sale, purchase, or other disposal or acquisition of shares comes within the definition of transaction in subsection (1) if, and only if, the shares entitle the holder to a licence that is registrable under Part 7A of the Land Transfer Act 1952.

- 1.4 Amend s.36 “Entitlement to licence” by inserting a new sub-section (2), and re-numbering present sub-sections (2) & (3) as sub-sections (3) & (4). The new sub-section (2) would read:

“(2) An individual may be licenced as a property manager if the individual satisfies the Registrar that he or she –

- (a) *Has attained the age of 18 years;*
- (b) *Is not prohibited from holding a licence under section 37; and*
- (c) *Is a fit and proper person to hold a licence; and*
- (d) *Has the prescribed qualifications.”*

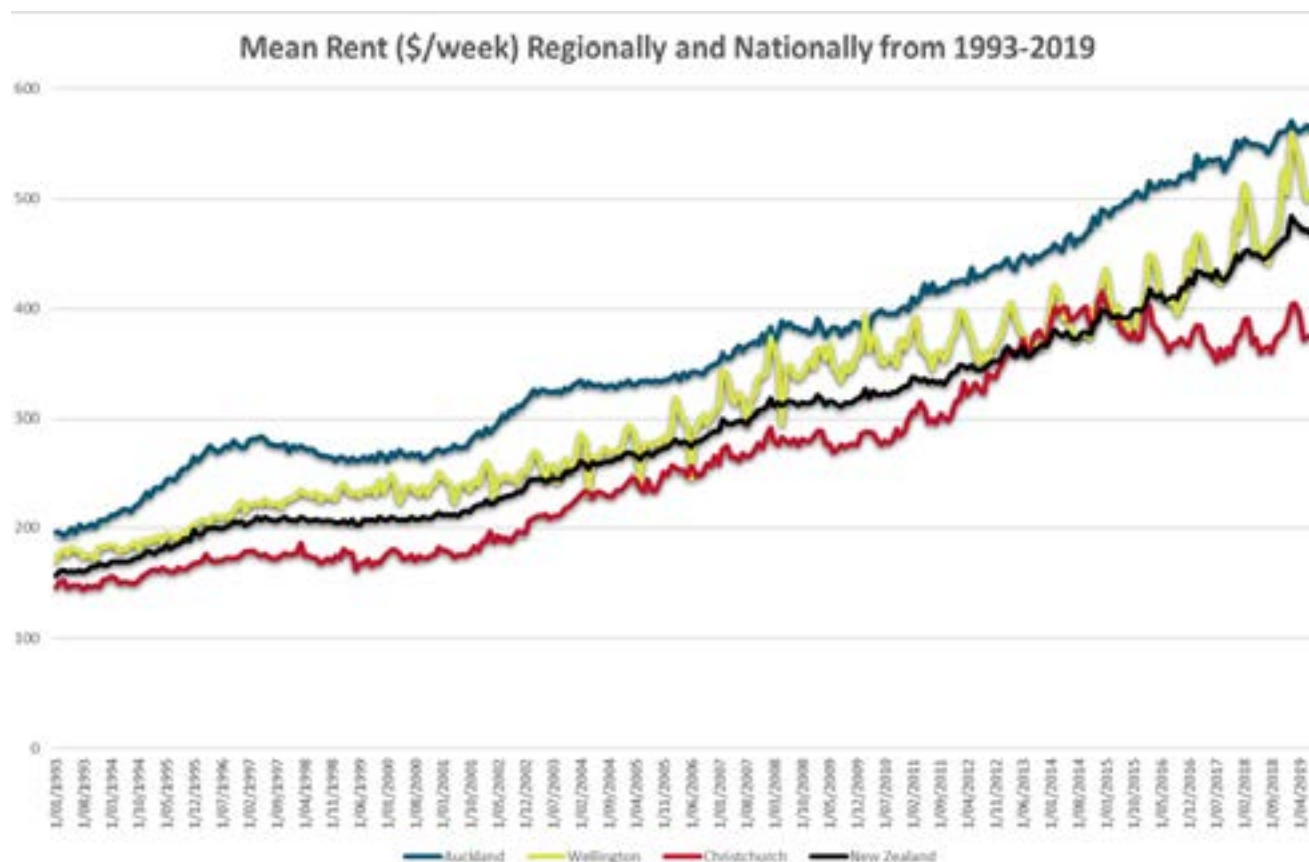
- 1.5 Insert a new sub-section s.48A, as follows:

“48A Property Manager’s Licence
A property manager’s licence authorises the licensee to carry out real estate agency work on his or her own account, whether in partnership or otherwise, being any work done or services provided, in trade, on behalf of another person, for the purpose of managing or administering a tenancy to which the Residential Tenancies Act 1986 applies, or managing or administering any aspect of any such tenancy.”

Appendix 4:

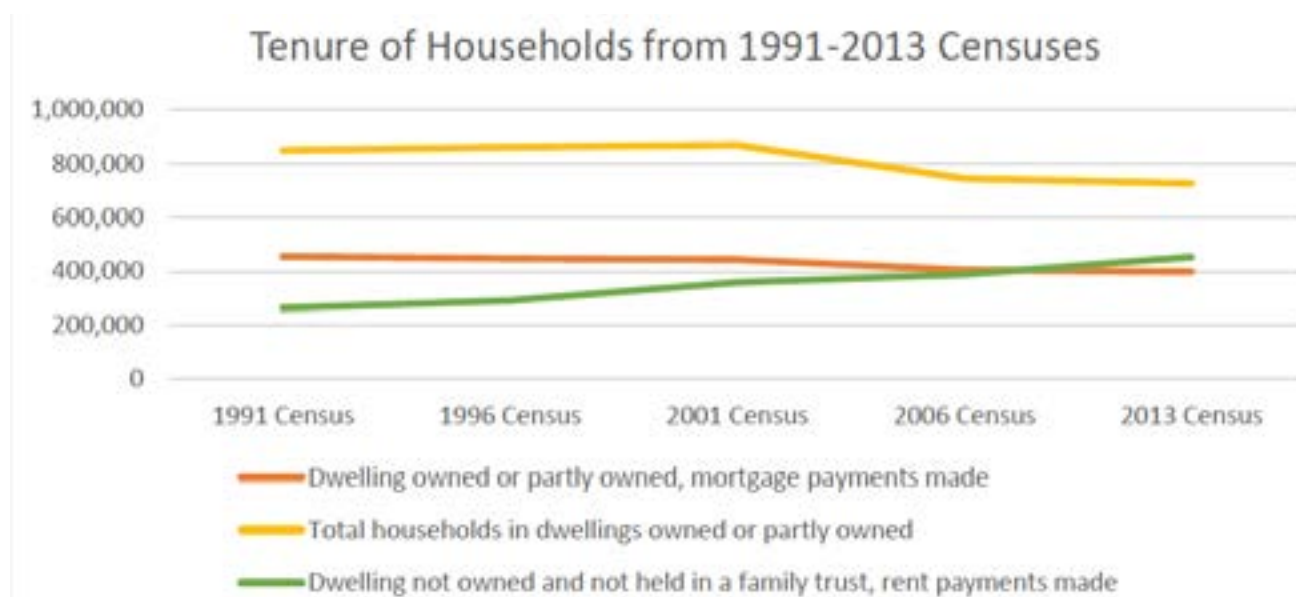
Statistics on Rental Housing Market

Fig 1: Mean Rent based on Rental Bond Data from MBIE



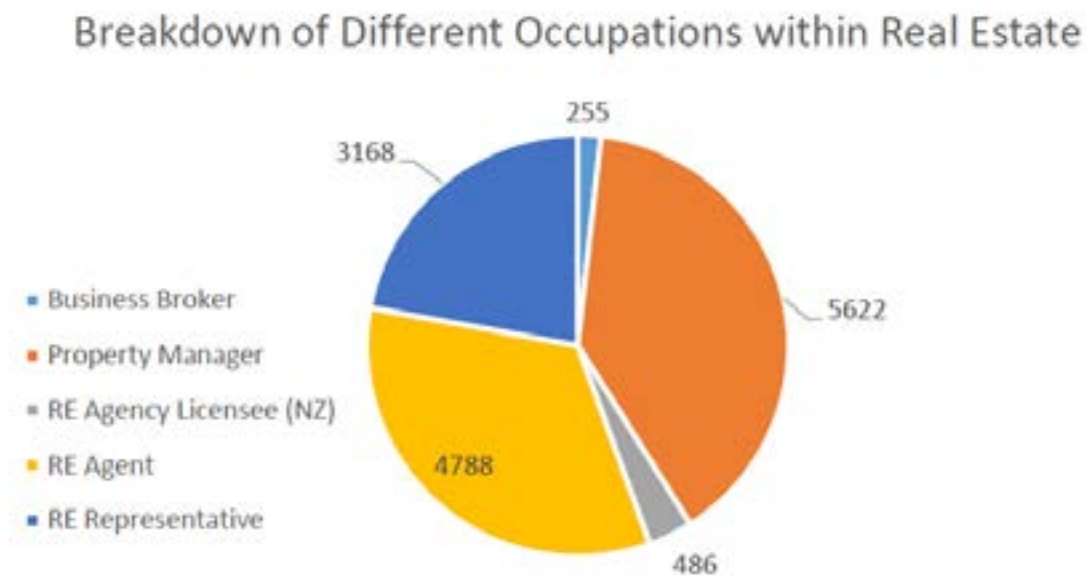
Sourced from <https://www.mbie.govt.nz/building-and-energy/tenancy-and-housing/rental-bond-data/> By Region. Accessed and accumulated on 20/08/2019.

Fig 2: Number of Renters compared to Owners



Sourced from Table 13, 2013 Census Quickstats about housing – Tables, <http://archive.stats.govt.nz/Census/2013-census/profile-and-summary-reports/quickstats-about-housing/available-tables.aspx>

Fig 3: Proportion of Property Managers Within Real Estate Sector (2013 Census)



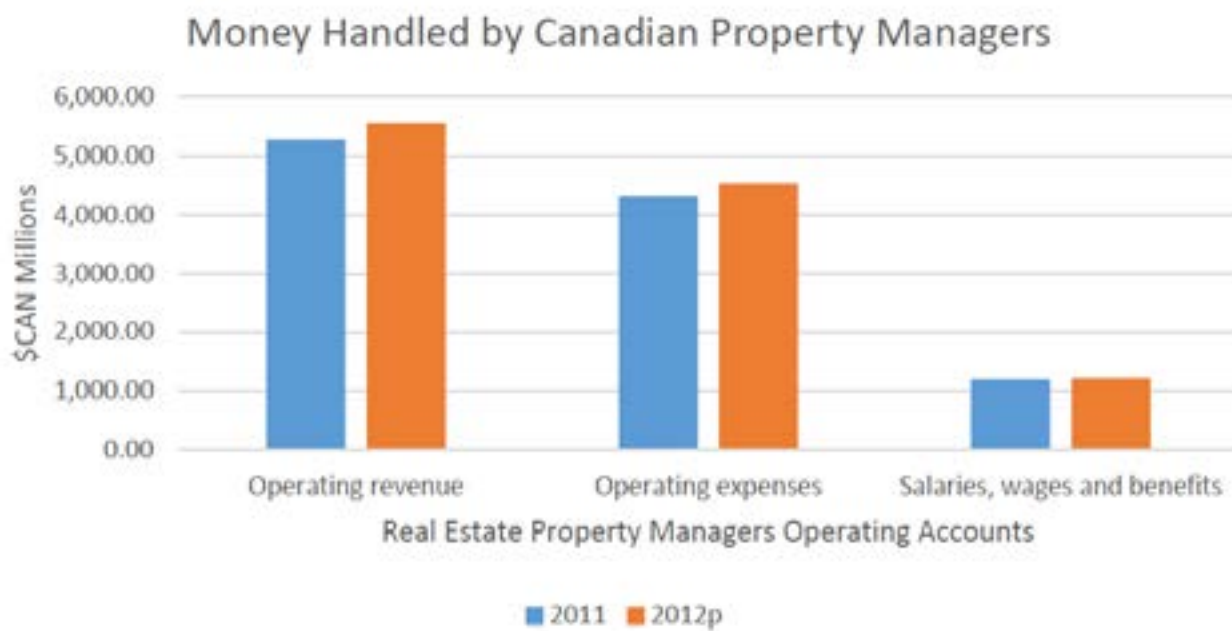
Sourced from http://archive.stats.govt.nz/browse_for_stats/economic_indicators/CPI_inflation/2013-cpi-review-advisory-committee.aspx#committee

Fig 4: Trend of Various Sectors in Real Estate (2006 & 2013 Comparison)



Sourced from http://archive.stats.govt.nz/browse_for_stats/economic_indicators/CPI_inflation/2013-cpi-review-advisory-committee.aspx#committee

Fig 5: Canadian Statistics on Money Handled by Property Managers



KEY:

p = Preliminary data from the 2012 study

Sourced from <http://www.statcan.gc.ca/tables-tableaux/sum-som/101/cst01/serv43a-3eng>

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